

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

SAUL CANIZALES,

Plaintiff,

vs.

No. CIV 07-0198 JB/RHS

SERGEANT TODD ARMENDARIZ,  
OFFICER ANGELO LOVATO, OFFICER  
TOMOYOSHI STEWARD, OFFICER  
SHAWN WILLOUGHBY, SERGEANT MARK  
GARCIA, OFFICER MATTHEW SCHMIDT,  
OFFICER MIKE BROADBECK,  
SERGEANT JAMES COLLINS individually  
and in their official capacities as police officers for the  
ALBUQUERQUE POLICE DEPARTMENT,

Defendants.

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** comes before the Court on the Plaintiff's Motion to Withdraw Plaintiff's Notice of Completion of Briefing on Plaintiff's Motion to Deem Facts in Plaintiff's Complaint as Established as a Discovery Sanction Pursuant to F.R.Civ.P. 37(b)(2)[Doc. #63], filed April 4, 2008 (Doc. 65)("Withdrawal Motion"). The primary issue is whether the Court should permit Plaintiff Saul Canizales to withdraw his Notice of Completion of Briefing on Plaintiff's Motion to Deem Facts in Plaintiff's Complaint as Established as Discovery Sanction Pursuant to F.R.Civ.P. 37(b)(2)[Doc. #63], filed April 4, 2008 (Doc. 64)("Notice of Completion"), because his counsel miscalculated the deadline in which the Defendants were to respond to the Motion to Deem Facts in Plaintiff's Complaint as Established as a Discovery Sanction Pursuant to F.R.Civ.P. 37(b)(2), filed March 19, 2008 (Doc. 63)("Sanctions Motion"). Because the Defendants apparently do not oppose this motion, and because no motion is needed to withdraw a pleading, the Court grants the



motion.

### **PROCEDURAL BACKGROUND**

On April 4, 2008, Canizales notified the Court that briefing was complete on his Sanctions Motion. See Notice of Completion. On that same date, the Defendants' counsel, Kathy Levy, noted that Canizales had miscalculated the deadline in which the Defendants were to respond to the Sanctions Motion. See Withdrawal Motion at 1. Ms. Levy informed Canizales' counsel that the Defendants' response was not due until Monday, April 7, 2008, because she has fourteen days plus three days for mailing. See id.

In his Withdrawal Motion, Canizales states that he hereby withdraws his Notice of Completion. See id. Canizales submits that the Defendants' Response, given Ms. Levy's calculation, is due April 5, 2008. See id. Canizales also requests that the Court withdraw his Notice of Completion. See id.

The Court's Courtroom Deputy Clerk attempted to contact Ms. Levy to determine the Defendants' position on Canizales' Withdrawal Motion. Ms. Levy did not return the Court Room Deputy's calls.

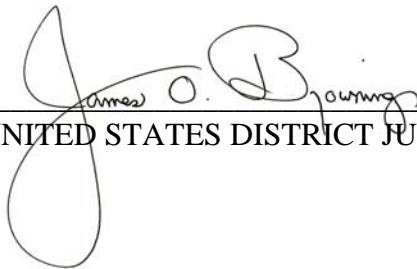
### **ANALYSIS**

D.N.M.LR-Civ. 7.9 states: "**Withdrawal of Documents.** A party may withdraw a document from consideration by the Court by filing and serving a notice of withdrawal which specifically identifies the document being withdrawn. Withdrawal requires consent of all other parties or approval of the Court." D.N.M.LR-Civ. 7.9. While the Court would be more comfortable securing the Defendants' express consent, it appears that, given the circumstances, the Defendants do not oppose this motion. Accordingly, the Court will grant the motion and deem the Notice of



Completion withdrawn.

**IT IS ORDERED** that the Plaintiff's Motion to Withdraw Plaintiff's Notice of Completion of Briefing on Plaintiff's Motion to Deem Facts in Plaintiff's Complaint as Established as a Discovery Sanction Pursuant to F.R.Civ.P. 37(b)(2) [Doc. #63] is granted.



UNITED STATES DISTRICT JUDGE

*Counsel:*

Frances A. Crockett  
Albuquerque, New Mexico

*Attorney for the Plaintiff*

Kathryn Levy  
Deputy City Attorney  
City of Albuquerque Legal  
Department  
Albuquerque, New Mexico

*Attorney for the Defendants*